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Privatization of Prisons

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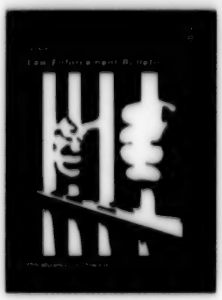

The Cover: *Is the privatization of adult correctional facilities in America a passing fad or is it the future? See article p.1.*

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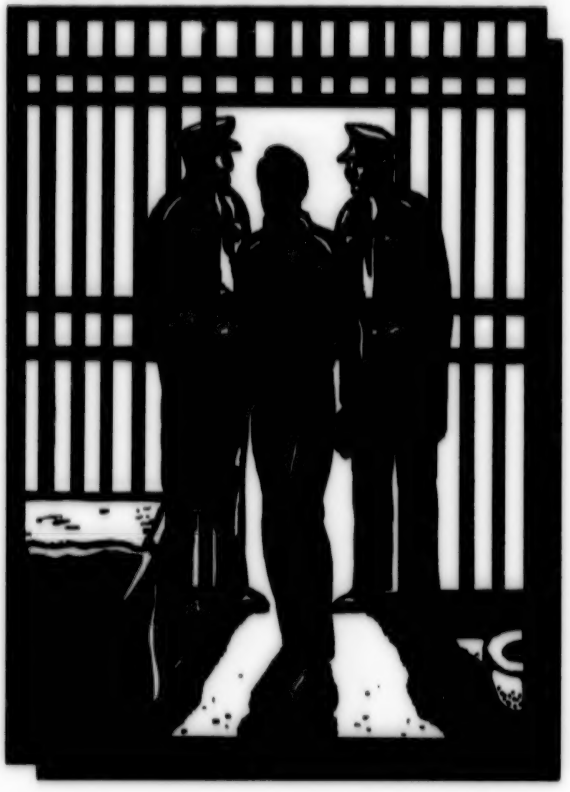
Privatization of Prisons

Fad or Future?



By
LT. DAVID K. BURRIGHT

Very few people would dispute that this Nation's prison system is in serious trouble. Corrections administrators are faced with grossly overcrowded conditions, shrinking revenues, and increased competition for operating capital. These problems are combined with soaring crime rates, a public cry for more jail sentences and longer incarcerations of criminals, and a Federal judiciary which all too often imposes sanctions and restrictions in an effort to force needed change.

It's no wonder that in response to these pressures, public officials are grasping for ideas and solutions to the prison problem. One major idea continually being proposed is the private contracting and operation (privatization) of adult correctional facilities.

The concept of privatization fuels a very controversial and heated debate. Most arguments center on whether private contractors can truly provide a better service at a lower cost than public practitioners while still not sacrificing quality, i.e., physical security, inmate programs, and support. An even more difficult issue involved in this controversy is whether corrections should either philosophically, ethically, or morally be turned over to private enterprise. However, questions still remain. Is privatization a panacea for the ills of correc-

> ***"The concept of private operations of correctional facilities is not a new one."***

Lieutenant Burright is with the Linn County Sheriff's Office in Albany, OR.

tions in the United States? Is it a fad or is it the future?

BACKGROUND

The concept of private operations of correctional facilities is not a new one. After the Civil War, many States entered into contracts with private businesses to operate State prisons. The inmates, however, were used virtually as slaves, and the practice degenerated to "...a well documented tale of inmate abuse and political corruption."[1] By the late 1800's, the practice of complete operation of prisons by private vendors had been abolished and control was taken by the States and counties.

Since then, public opinion and pressure have vacillated regarding the treatment of lawbreakers. At times, public opinion has been one of "reform," with the idea that criminals should be treated and not necessarily incarcerated. This was evident in the 1960s and early 1970s when the building of new prisons and jails was very unpopular and thought unnecessary. Many practitioners believe this is the one reason that there is such a shortage of jail/prison beds today.

In the meantime, private businesses recognized a potential market and began offering specialty programs and began contracting for medical and food service and housing for low-security juveniles and illegal aliens being held for the Immigration and Naturalization Service (INS). However, it was not until these private vendors began pressing for the opportunity to take over the complete management and operation of full-scale adult prisons and jails that opposition began to mount. Even so, by 1987, three States had adopted legislation authorizing the private operation of the State facilities, and a dozen more were actively considering it.[2] Today, there are 64 private companies in this business, and several States and counties have prisons being operated by these companies.[3]

ARGUMENTS—PRO

Better Performance

The proponents of the private operation of prisons and jails offer a variety of arguments to support their position. Many believe the government has not done a good job of management. "Costs have soared, prisoners are coming out worse off than when they went in, and while they are in they are kept in conditions that shock the conscience, if not the stomach."[4] Because the work would be performed under a service contract, proponents say that vendors can be forced to perform or face termination of the contract.

Cost Savings

Private vendors believe they can operate the facilities for a much lower cost, saving 10-25% of the Nation's corrections budget. These savings are possible because the vendors are unencumbered by politics, bureaucracy, and civil service that influence public operations.

An additional incentive to economize is the competition from other private vendors. Others claim that costs can be lowered by reducing employee turnover through better training, recruiting and supervision, and reduced use of overtime.

Efficiency

Many private vendors employ administrators who are highly experienced in corrections; in fact, a large number have served in the public sector.[5] When facilities are transferred to the private sector, the public employees on staff are of-

fered the opportunity to be hired by the private operators in most instances, thereby assuring trained, qualified employees are manning the prisons. A private business could also contract with two adjoining States to house prisoners in a common facility, resulting in increased efficiency for both the public and the vendor.

Reduced Civil Liability

Some vendors have agreed to indemnify the government should lawsuits be filed against the facility. As a means of further reducing the government's potential for liability, these operators consent through their contracts to run the facility in accordance with American Correction Association (ACA) standards.

ARGUMENTS—CON

Reduced Costs or Service?

Opponents to privatization strongly question whether there will be any real savings by contracting out the operation of prisons and jails.[6] They argue that cost cutting can only be at the expense of humane treatment or security measures. Since the majority of operating costs center on personnel, especially in maximum security facilities, any significant reductions would have to be made in the daily costs of inmate care or in measures that would jeopardize the security of the facility.

Even though vendors point to lower inmate costs per day of the current privately run operations, opponents state that most of the private experience is with short-term minimum security facilities and special program operations (juvenile facilities, INS lock-ups, halfway houses, etc.). Operating expenses for these facilities are much less than for a maximum security prison or jail, which requires additional staff, security measures, and inmate programs.

Opponents also question whether the "lower costs" include the full cost of contract administration and management. To ensure the vendor is complying with all contractual obligations, especially in a large multifacility operation, would require governmental monitoring and administration resulting in an additional level of bureaucracy.[7]

Uncontrollable Future Costs

Opponents fear that once private vendors take over facility operations and the government dismantles its organizational structure, it will significantly reduce the public's leverage on contracts negotiated in future years. This reduced leverage and lack of alternatives could result in huge future costs.

The public must also be prepared to reassume control of the facilities on short notice should the contracting vendor be unable to fulfill its contract. In this situation, unlike in the public sector, the government would not have the option of simply shutting down the operation, and the resultant problems and costs of regaining control would be staggering.

Lateral Hiring of Personnel

Corrections administrators fear that the private sector will lure away the best, most experienced employees, making it even more difficult to manage the facilities remaining under government control. Unless carefully monitored, the private vendor may also attempt to have low-security inmates assigned to their facilities, thereby leaving the high-risk, higher cost inmates to the government.

Civil Liability

Opponents to privatization argue that the government cannot contract away its civil liability as it relates to the proper management and operation of corrections facilities, and this position appears to be supported by the courts.[8] Also, the mere fact that a contractor agrees to abide by ACA standards does not guarantee that a civil rights complaint will not be successfully litigated, as the courts have not recognized any set standard to be followed in these cases.[9]

With regard to indemnification, although promising in appearance, there has not yet been a

> ***"Corrections administrators are faced with grossly over-crowded conditions, shrinking revenues and increased competition for operating capital."***

court case to be able to judge the practicality of this. In addition, opponents are concerned as to if and how vendors will be insured. Will they be able to financially survive in the face of a large settlement, and if not, who will bail them out?

Constitutional/Moral/Ethical Issues

Probably the most important of all arguments against privatization deals with the question of whether the government should delegate the authority for such a traditional and important governmental function as the deprivation of freedom to citizens (criminals). Opponents say that corrections centers on issues at the very core of American government and that it has no business being in the hands of private enterprise.

For instance, absent any special legislation or deputization, private contractors have only the authority of a private citizen to arrest, use force in defense of themselves or others, and to carry firearms. They have no special police powers or authority.[10] This has tremendous implications when considering incarceration and the use of force to maintain control and security.

Another important constitutional issue deals with decisions affecting parole. The American Civil Liberties Union's position on the issue is quite clear:

> "...we do see civil liberties implications in the situation where private entities or persons can affect or impact the length or duration of confinement of a prisoner. Plainly it is in the interest of private entrepreneurs to increase the number of prisoners in facilities because they are paid by the head ... any decision which impacts these numbers must be made by government officials with no ties to a private contractor. A concrete example is in the disciplinary realm where jail or prison officials are empowered to take away good time or file adverse disciplinary reports which will in turn affect parole release."[11]

The move toward the privatization of adult correctional facilities in America is more than a passing fad.

CONCLUSION

The move toward the privatization of adult correctional facilities in America is more than a passing fad. Private enterprise is showing a willingness to commit millions of dollars in an attempt to break into what it believes to be a very lucrative market.

But, is it really the future? On this, the "jury is still out." Both sides present convincing arguments. Proponents tout reduced costs and increased efficiency, while opponents ask if the savings are real and question the basic legitimacy of privatization. The problem is that neither side has been able to conclusively prove its case.

The President's Commission on Privatization has recommended that "proposals to contract for the administration of entire facilities at the federal, state, or local level ought to be seriously considered."[12] Perhaps that's good advice, but the issue will have to be ultimately decided by the people within the affected jurisdictions and the courts.

LEB

Footnotes

[1] John J. DiIulio, Jr., *Private Prisons* (Washington, DC: Government Printing Office, National Institute of Justice, 1989), p. 3.

[2] Ibid., p. 1.

[3] Telephone interview with Dean Moser, National Sheriffs' Association, Alexandria, VA, January 19, 1989.

[4] House of Representatives, 99th Congress, Hearings Before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee of the Judiciary, Privatization of Corrections, quoting statement of Ira P. Robbins, *Concerning Privatization of Corrections* (Washington, DC: Government Printing Office, 1985), p. 6.

[5] Ibid., p. 38.

[6] Opposition or concern has been voiced by the American Bar Association, American Civil Liberties Union, National Sheriff's Association, and various labor organizations.

[7] Corrections Corporation of America (CCA) includes the cost of 1 government monitor in the cost of their contracts.

[8] *Medina* v. *O'Neill*, 589 F.Supp. 1028 (S.D. Texas, 1984), which held the INS responsible for constitutional violations against 16 illegal aliens who were held at the direction of the INS by a private contractor.

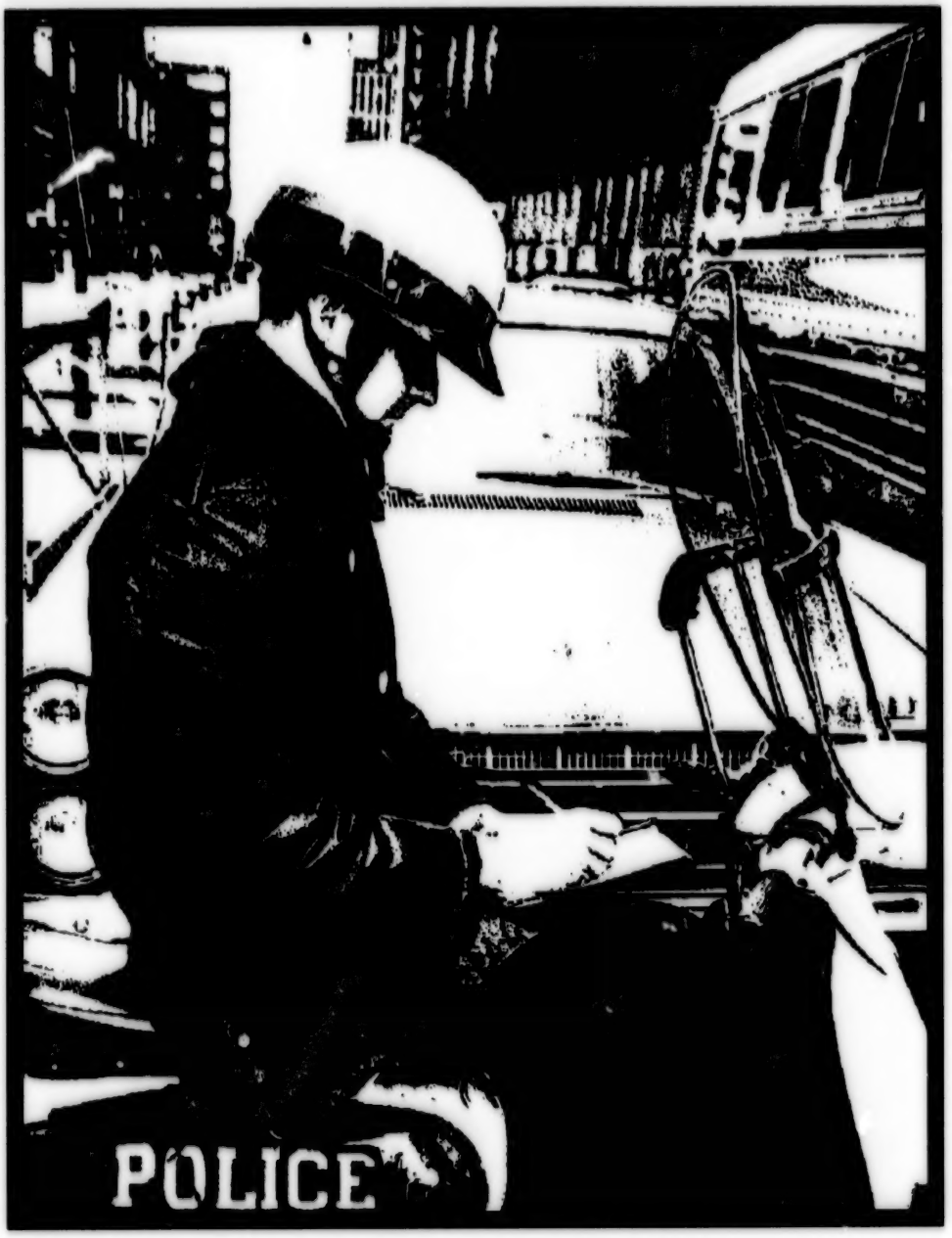
[9] *Bell* v. *Wolfish*, 441 U.S. 520, 995 S.Ct. 1861, 60 L.Ed.2d 447 (1979).

[10] Private Security Advisory Council, *Scope of Legal Authority of Private Security Personnel* (Washington, DC: Government Printing Office, Department of Justice, 1976), p. 1.

[11] Supra note 4, quoting ACLU Position on Privatization of Prisons and Jails, p. 3.

[12] *Report of the President's Commission on Privatization* (Washington, DC: Government Printing Office), p. 150.

The Administrative Warning Ticket Program



By
LT. ANDREW J. BARTO

Overcrowded courtrooms, excessive court time for police officers, and citizens spending long hours in court are not new problems for the judicial system. Many courtrooms are filled beyond capacity, which unfortunately results in many cases not being prosecuted. However, the Village of Romeoville, IL, a suburban community of Chicago, implemented an Administrative Warning Ticket (AWT) Program to alleviate these problems.

The Program

The AWT program was designed to administratively process minor ordinance violations, such as licensing and equipment violations, with the intent of obtaining compliance without the matter entering the court system. The unique feature of the program requires the defendant to pay an administrative fine or ticket designed to recover a portion of the administrative expense of the program.[1] These "hang on" or "P" tickets, as they are more commonly called, have been used by a number of communities, particularly in Cook County, IL.

The authority for the AWT program is derived from Chapter 24, Section 1-2-8 of the Illinois Revised Statutes (1985), which states that "fines, penalties, and forfeitures for the violation of ordinances...shall be paid...at such times and in such manner as may be prescribed by ordinance."[2] The procedure of the "hang on" or "P" ticket is set by ordinance. These tickets are written solely for minor offenses, such as parking tickets, village stickers and minor equipment violations. While Chapter 24, Section 1101-1, Illinois Revised Statutes (1985) provides that "each municipality may pass and enforce all necessary police ordinances," case law has repeatedly held that this section grants municipalities no additional powers other than those delegated under other provisions of the statutes.[3]

"...the AWT does not result in a mark against their driver's license record, thereby providing another incentive to ensure quick compliance...."

Lieutenant Barto is with the Village of Romeoville, IL, Police Department.

In Practice

Once an officer has observed a minor ordinance violation, which has been adopted by the Village Board for the AWT program, that officer has the option to issue a State uniform traffic citation or the AWT. In many cases the officer chooses the latter.

The AWT is a four-part citation. At the time of the offense, the officer will issue the violator two copies—the first page and the fourth page. The fourth page is an envelope in which the violator can mail/bring in the fine money. The second and third pages of the ticket are the issuing department's copies. The third page also becomes the final notice reminder if the fine has not been paid within the first 10 days.

At the time of issuance, the officer will also explain the violation and issue the proper copies. The violator will then have 10 days from the date of issuance to pay the fine, and in some cases, repair or comply. Repair and comply is an additional requirement in which the violator must repair/remedy the violation and show proof at the police station. Violators who reside outside the village may have their local police department inspect the violation and forward the proof of compliance to the Romeoville Police Department.

If the penalty has not been paid within the first 10 days, the violator will be sent the final notice stating that the fine has been increased to $25. If payment is not made within 20 additional days from the original issue date, a criminal complaint will be signed and a court appearance will be mandatory. If payment is

received, but the violator has not complied, the person shall be cited the second time with a State uniform traffic citation. Repeat offenders, however, are cited on State uniform traffic citations and not the AWT ticket.

The fines are paid at the village hall or the night depository located within the police department. Upon receipt, village hall personnel will then note that the fine has been paid and direct it to the originating department. The originating department will then use this to close its file. If 30 days have passed and the fine has not been paid, the AWT will be voided and kept as evidence. A criminal complaint will then be signed, and a notice to appear in court mailed to the violator.

The Benefits

In essence, tickets issued under this program are a courtesy. Violators are almost eager to dispose of the matter by paying the fine, which is significantly less than what would ordinarily be due on a State uniform traffic citation.[4] Recipients also realize that the AWT does not result in a mark against their driver's license record, thereby providing another incentive to ensure quick compliance and settlement of the matter.

Another benefit of the program is that offenders, who can show compliance at the station, do not need to post bond or take time off to appear in court. The AWT system also encourages greater compliance of equipment and licensing ordinances than the traditional type of written warning ticket.

Because the number of minor violations appearing on the court docket is reduced, a larger portion of the court's time is spent dealing with more serious violations. The amount of paperwork handled by court clerks is reduced because they are no longer required to process what was previously a substantial number of minor ordinance violations. And, personnel who would otherwise be involved in court preparation and appearances are able to perform other duties. However, the most notable benefit for the police department has been a significant reduction of officer's court time compensation. This equates monetarily to thousands of dollars saved each fiscal year.

> ***"Because the number of minor violations appearing on the court docket is reduced, a larger portion of the court's time is spent dealing with more serious violations."***

The Results

From February 1, 1988, through May 31, 1988, the fines collected reflected a voluntary compliance rate between 75 and 80 percent. March indicated a higher number of tickets as this was the first month of intensive enforcement. April and May tickets were possibly more realistic as the community made an effort to comply without further action. An increase was expected during the summer due to increased traffic, and because road monitoring for expired village vehicle stickers began in July. As of May 31, 1988, a total of 594 tickets were issued and $5,440 in fines were collected.[5]

Three departments are involved in the program—police, fire, and code enforcement. Both the chief of police and code enforcement officer have agreed that the 80- to 90-percent compliance estimates have exceeded their original expectations.

Administratively, the program has worked smoothly, with very few problems. The village police department has had few complaints from residents, and most seem to appreciate the opportunity to take care of the problem locally without a court appearance.

Conclusion

Overall, the program has been a success. Various savings have been realized on the part of both the court and the village. Not to be overlooked is the positive effect the program has had on community relations between the police department and local citizens. The program has also enhanced driver safety and awareness of traffic regulations. The AWT program has had a decidedly favorable effect on the Village of Romeoville, the circuit court of Will County, IL, and the residents of Romeoville.

LEB

Footnotes

[1] Sonya A. Crawshaw, *History of the Warning Ticket*, 1984.

[2] Illinois Revised Statutes, *Cities and Villages*, Chapter 24, Section 1-2-8, 1985.

[3] Illinois Revised Statutes, *Cities and Villages*, Chapter 24, Section 1101, 1985.

[4] Binninger, Dawson, Sauer, "The P.W. Story," *Illinois Municipal Review*, 1984.

[5] Andrew J. Barto, *Review of the AWT Program*, 1988.

The Bulletin Reports

Women On The Move

The Nation's police departments have made considerable progress toward increasing the proportion of women in policing, but there is still room for improvement, particularly at the supervisory level. This is according to a research report, ***Status of Women in Policing,*** released by the Police Foundation.

The report reveals that the percentage of female sworn officers in police departments serving populations of more than 50,000 rose from 4.2 percent in 1978 to 8.8 percent in 1986. And although women are still underrepresented based on their numbers in the population, most recruitment, hiring, and academy training policies appear to be unbiased. The report also notes that if current selection procedures continue, women will eventually make up as much as 20 percent of all police personnel.

The report goes on to mention the need for further progress in promoting women to the supervisory ranks. Survey findings show that although the percentage of women in supervisory positions more than tripled between 1978 and 1986, women still made up only 3.3 percent of municipal police supervisors, mostly in lower supervisory ranks.

This can be attributed in part to certain promotion eligibility criteria, such as length of service and seniority in rank.

Other significant findings of the foundation study include:

- The percentage gains of women in policing were greater in larger cities. Women constituted 10.4 percent of police in cities with populations of more than 1 million and represented only 4.9 percent of police in cities with populations between 50,000 and 100,000.
- Minority women still make up a disproportionately large share of all women in policing—38 percent in 1978 and 40 percent in 1986.
- The proportion of women in higher ranking command staff is 1.4 percent, up 0.5 percent from 1978.
- Annual rates of voluntary and involuntary separations from the police force were higher among women (6.3 percent) than men (4.6 percent). However, the turnover rate for women was much lower in departments serving cities with populations over 1 million (4.2 percent).

To obtain additional information on this research project, contact the Police Foundation, 1001 22nd Street, NW, Suite 200, Washington, DC 20037; the telephone number is 1-202-833-1460.

Managing Confidential Funds

A monograph entitled ***Managing Confidential Funds*** has been released by the Institute for Law and Justice (ILJ) and is designed for drug enforcement administration. It covers the principles of managing confidential funds, step-by-step controls and related procedures, and accounting reports and audits. The appendix contains sample forms used in managing these funds.

Although directed toward small- to mid-sized law enforcement agencies, the policies and examples contained in the monograph are also appropriate for larger agencies.

ILJ will provide one free copy per agency upon written request only. Correspondence should be sent to the Institute for Law and Justice, 1018 Duke Street, Alexandria, VA 22314.

Traffic Institute Catalog

The ***1990 Publications Catalog*** of Northwestern University's Traffic Institute is now available. For more than 50 years, the institute has served law enforcement, criminal justice, and highway transportation agencies through publications, training, research and development, and direct technical assistance.

The textbooks and training manuals currently offered by the institute span a wide range of topics. The index contains more than 100 entries that will provide practitioners with training and resource materials that reflect current theory and practice. Each entry has a short synopsis of what is covered in the material.

To obtain a copy of the publications catalog, contact the Book Department, The Traffic Institute, Northwestern University, P.O. Box 1409, Evanston, IL 60204, or call toll-free 1-800-323-4011. For Illinois residents, the number is 1-708-491-5052.

Asset Forfeiture

The Bureau of Justice Assistance (BJA) and the Police Executive Research Forum (PERF) have published volumes 7, 8, and 9 in their Asset Forfeiture Series. (See the September 1989, issue of the ***FBI Law Enforcement Bulletin*** for information on the first six volumes.) The reports are entitled ***"Uncovering Assets Laundered through a Business," "Starting Forfeiture Programs: A Prosecutor's Guide,"*** and ***"Developing Plans to Attack Drug Traffickers' Assets."*** The nine reports provide information on how police and prosecutors can successfully establish and operate asset forfeiture programs.

To obtain copies of the Asset Forfeiture Bulletin, contact the Police Executive Research Forum, 2300 M Street, N.W., Suite 910, Washington, DC 20037, telephone: 1-202-466-7820.

Anti-Drug Abuse Act of 1988

A monograph released by the American Bar Association examines, in depth, each title of the Anti-Drug Abuse Act of 1988, an act that made a number of significant changes in Federal criminal law. Entitled ***"A Practitioner's Guide to the Anti-Drug Abuse Act of 1988,"*** the monograph looks at these changes and focuses on how they affect the practice of Federal criminal law. It also describes recent applications of the new law and how it affects the prosecution or defense of a case. The monograph examines such issues as denial of Federal benefits to drug traffickers, asset forfeiture, civil enforcement enhancement, the death penalty, and money-laundering enforcement.

To order the monograph, contact the ABA Order Fulfillment Department, American Bar Association, 750 North Lake Shore Drive, Chicago, IL 60611, telephone 1-312-988-5555. The order number is 509-0043.

The Bulletin Reports, a collection of criminal justice studies, reports, and project findings, is written by Kathy Sulewski. Send your material for consideration to: FBI Law Enforcement Bulletin, Room 7262, J. Edgar Hoover Building, 10th & Penn. Ave., NW, Washington, DC 20535.

(NOTE: The material presented in this section is intended to be strictly an information source and should not be considered as an endorsement by the FBI for any product or service.)

Focus

Arson Investigations

By William A. Tobin
Special Agent
FBI Laboratory
Washington, DC

Collapsed furniture springs, which have been subjected to fire, have been used by arson investigators for many years, both as an indicator of arson and/or of a slow, smoldering source, such as a cigarette. However, FBI Laboratory research has revealed that collapsed springs are not a valid indicator of the presence of an accelerant or of a smoldering source.

A review of the literature reveals that there are contradictory conclusions regarding the condition of springs subjected to fire. Some sources maintain that collapsed springs are, indeed, an indication of a slow, smoldering origin because of the consistent heat required to collapse them. Others argue that collapsed springs are positive proof of the presence of an accelerant because the temperature required to collapse the springs cannot be reached by the burning of normal building materials alone. The contradictory nature of these conclusions, therefore, suggests that a detailed metallurgical investigation was necessary to determine which theory was valid.

When metals are subjected to elevated temperatures, many metallurgical parameters and considerations can come into play. Metallurgists have long known, for example, that in order for a metal to be of equal strength, it must be heated to a certain temperature in a certain amount of time. This can be accomplished by applying twice the heat in half the time, or half the heat in twice the time. The FBI Laboratory's investigation examined not only the interactions of time and temperature but also of chemical composition, fabrication history, and other metallurgical conditions.

Part of the FBI's investigation involved actual test burnings of mattresses of varying innerspring construction. The mattresses were placed in a room full of furniture at the FBI's Test Burn Facility in Quantico, VA. To simulate an accelerant-based fire, gasoline was poured on the mattresses and ignited. To simulate a cigarette or other slow, smoldering type of fire, 10 ml of propanol was placed on the mattresses and ignited. After the resulting fires were allowed to burn for varying amounts of time, they were extinguished and data, including photographs, were collected. The most notable conclusion was that within the same mattress, there were both collapsed and uncollapsed springs. Therefore, consistent with metallurgical expectations, controlled testing revealed that the collapsed, partially collapsed or uncollapsed condition of furniture springs is of no value as an indicator of arson or of a slow, smoldering fire. LEB

Complete details of the empirical testing described above are presented in the November issue of Fire Technology, *published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, telephone (617) 770-3000.*

The Criminal Behavior of the Serial Rapist

By
ROBERT R. HAZELWOOD, M.S.
and
JANET WARREN, D.S.W.

Special Agent Hazelwood is an instructor at the FBI Academy assigned to the Behavioral Science Instruction/Research Unit. Co-author Janet Warren is with the Institute for Psychiatry and Law at the University of Virginia in Charlottesville, VA.

From 1984 to 1986, FBI Special Agents assigned to the National Center for the Analysis of Violent Crime (NCAVC) interviewed 41 men who were responsible for raping 837 victims. Previous issues of the *FBI Law Enforcement Bulletin* provided an introduction to this research[1] and the characteristics of the rapists and their victims.[2] This article, however, describes the behavior of these serial rapists during and following the commission of their sexual assaults. The information presented is applicable only to the men interviewed; it is not intended to be generalized to all men who rape.

PREMEDITATION

The majority of the sexual attacks (55-61%) committed by these men were premeditated across their first, middle, and last rapes, while fewer rapists reported their crimes as being impulsive (15-22%) or opportunistic (22-24%). Although no comparable data on serial rape are available, it is probable that the premeditation involved in these crimes is particularly characteristic of these serial rapists. It is also probable that this premeditation is reflective of their preferential interest in this type of crime and largely accounts for their ability to avoid detection.

METHODS OF APPROACH

There are three different styles of approach rapists frequently use: The "con," the "blitz," and the "surprise."[3] Each reflects a different means of selecting, approaching and subduing a chosen victim.

The "Con" Approach

- Case Number 1

John, a man who raped more than 20 women, told the interviewers that he stopped one of his victims late at night and identified himself as a plainclothes police officer. He asked for her driver's license and registration, walked back to his car and sat there for a few moments. He then returned to the victim, advised her that her registration had expired and asked her to accompany him to his car. She did so, and upon entering the car, he handcuffed her and drove to an isolated location where he raped and sodomized the victim.

As in the above case account, the con approach involves subterfuge and is predicated on the rapist's ability to interact with women. With this technique, the rapist openly approaches the victim and requests or offers some type of assistance or direction. However, once the victim is within his control, the offender may suddenly become more aggressive.

The con approach was used in 8 (24%) of the first rapes, 12 (35%) of the middle rapes, and 14 (41%) of the last rapes. Various ploys used by the offenders included impersonating a police officer, providing transportation for a hitchhiking victim, and picking women up in singles bars. Obviously, this style of initiating contact with victims requires an ability to interact with women.

> ***"The majority of the sexual attacks...committed by these men were premeditated...."***

The "Blitz" Approach

- Case Number 2

Phil, a 28-year-old male, approached a woman loading groceries in her car, struck her in the face, threw her in the vehicle and raped her. On another occasion, he entered a women's restroom in a hospital, struck his victim, and raped her in a stall. Exiting the restroom with the victim in his grasp, he threatened her as though they were involved in a lover's quarrel, and thus precluded interference from concerned onlookers who had gathered when she screamed.

In a blitz approach, the rapist uses a direct, injurious physical assault which subdues and physically injures the victim. The attacker may also use chemicals or gases but most frequently makes use of his ability to physically overpower a woman. Interestingly, despite its simplicity, this approach was used in 23% of the first rapes, 20% of the middle rapes, and 17% of the last rapes. Even though it is used less often than the con approach, the blitz approach results in more extensive physical injury and inhibits certain fantasy components of the rape that may be arousing to the rapist.

The "Surprise" Approach

- Case Number 3

Sam, a 24-year-old male, would preselect his victims through "peeping tom" activities. He would then watch the victim's residence to establish her patterns. After deciding to rape the woman, he would wait until she had gone to sleep, enter the home, and place his hand over her mouth. He would advise the victim that he did not intend to harm her if she cooperated with the assault. He raped more than 20 women before he was apprehended.

The surprise approach, which involves the assailant waiting for the victim or approaching her after she is sleeping, presupposes that the rapist has targeted or preselected his victim through unobserved contact and knowledge of when the victim would be alone. Threats and/or the presence of a weapon are often associated with this type of approach; however, there is no actual injurious force applied.

The surprise approach was used by the serial rapists in 19 (54%) of the first rapes, 16 (46%) of the middle rapes, and 16 (44%) of the last rapes (percentages vary due to the number of rapes). This represents the most frequently used means of approach and is used most often by men who lack confidence

in their ability to subdue the victim through physical threats or subterfuge.

CONTROLLING THE VICTIM

How rapists maintain control over a victim is dependent upon two factors: Their motivation for the sexual attack and/or the passivity of the victim. Within this context, four control methods are frequently used in various combinations during a rape: 1) Mere physical presence; 2) verbal threats; 3) display of a weapon; and 4) the use of physical force.[4]

The men in this study predominantly used a threatening physical presence (82-92%) and/or verbal threats (65-80%) to control their victims. Substantially less often they displayed a weapon (44-49%) or physically assaulted the victim (27-32%). When a weapon was displayed, it was most often a sharp instrument, such as a knife (27-42%).

One rapist explained that he chose a knife because he perceived it to be the most intimidating weapon to use against women in view of their fear of disfigurement. Firearms were used less frequently (14-20%). Surprisingly, all but a few of the rapists used binding located at the scene of the rape. One exception was an individual who brought pre-cut lengths of rope, adhesive tape and handcuffs along with him.

THE USE OF FORCE

The amount of force used during a rape provides valuable insight into the motivations of the rapist and, hence, must be analyzed by those investigating the offense or evaluating the offender.[5] The majority of these men (75-84%) used minimal or no physical force across all three rapes.[6] This degree of minimal force is defined as non-injurious force employed more to intimidate than to punish.[7]

- Case Number 4

John began raping at 24 years of age and estimated that he had illegally entered over 5,000 homes to steal female undergarments. On 18 of those occasions, he also raped. He advised that he had no desire to harm the victims. He stated, "Raping them is one thing. Beating on them is entirely something else. None of my victims were harmed and for a person to kill somebody after raping them, it just makes me mad."

> ***"The amount of force used during a rape provides valuable insight into the motivations of the rapist...."***

Force resulting in bruises and lacerations or extensive physical trauma requiring hospitalization or resulting in death increased from 5% of the first rapes, 8% of the middle rapes, to 10% of the last rapes. Two victims (5%) were murdered during the middle rapes and an additional 2 (5%) were killed during the last rapes.

- Case Number 5

Phil, an attractive 30-year-old male, described stabbing his mother to death when she awoke as he was attempting to remove her undergarments in preparation for sexual intercourse. He had been drinking and smoking marihuana with her for a period of time prior to the attempted sexual act, and after she fell asleep, he began fantasizing about having sex with her.

Most of the rapists in this study did not increase the amount of force they used across their first, middle and last rapes.[8] However, 10 of the rapists, termed "increasers," did use progressively greater force over successive rapes and raped twice as many women on the average (40 victims as opposed to 22 victims) in half the amount of time (i.e., raping every 19 days as opposed to 55 days). By the time of the last assault, they were inflicting moderate to fatal injuries. These factors, coupled with progressive interest in anal intercourse among the increasers, suggest that for these individuals, sexual sadism may be a motive for their assaultive behavior.

VICTIM RESISTANCE

Victim resistance may be defined as any action or inaction on the part of the victim which precludes or delays the offender's attack. These behaviors may be

described as passive, verbal, or physical in nature.[9]

The rapists reported that their victims verbally resisted them in 53% of the first assaults, 54% of the middle attacks, and 43% of the last attacks. Physical resistance occurred in only 19%, 32% and 28% of the first, middle, and last rapes respectively. The relatively low incidence of passive resistance (i.e., 28% in the first rape, 17% of the middle rape, and 9% of the last rape) most likely reflects the rapists' inability to discern this type of resistance.

In previous research, it was found that there was no relationship between both verbal and physical resistance and the amount of injury sustained by the victim.[10] Interestingly, however, the degree of the rapists' pleasure and the duration of the rape did increase when the victim resisted.

In this study, the offenders' most common reaction to resistance for the first, middle and last rapes was to verbally threaten the victim (50-41%). Compromise or negotiation took place in 11-12% across the rapes, and physical force was used in 22% of the first rapes, 38% of the second rapes and 18% of the third rapes. The rapists also reported 6 incidents in which they left when the victim resisted; however, it is not clear at what point in the attack the resistance occurred.

SEXUAL DYNAMICS OF THE RAPE

The sexual acts that the victim was forced to engage in remained relatively constant across all three rapes. The most common acts were vaginal intercourse (54-67%), oral sex (29-44%), kissing (8-13%) and fondling (10-18%). Anal intercourse (5-10%) and foreign object penetration (3-8%) were reported less often. In assessing changes in behavior over the first, middle and last rapes, there appears to be a trend wherein the rapists' interest in oral sex increases while his interest in vaginal contact decreases.

The amount of pleasure that the rapist experienced during the three assaults was measured with the statement: "Think back to the penetration during the rape. Assuming '0' equals your worst sexual experience and '10' your absolutely best sexual experience, rate the amount of pleasure you experienced." The majority of rapists reported surprisingly low levels of pleasure (3.7). However, the type of contact that resulted in higher scores differed widely.[11] One rapist reported appreciation for his victims' passivity and acquiescence, while another referred to the pleasure experienced in the rape-murder of two young boys as being "off the scale."

> ***"...serial rapists use verbal threats to subdue the victim, and only after they believe they have gained control...do they move on to various other modes of conversing or interacting."***

- Case Number 6

Paul had raped adult women, adolescent and preadolescent girls and brought his criminal career to an end with the rape and murder of two 10-year-old boys. When asked to rate the sexual experiences, he advised that he would rate the adult and adolescent females as "0" and the preadolescent girls as "3." He then stated, "When you're talking about sex with 10-year-old boys, your scale doesn't go high enough."

VERBAL ACTIVITY

Across the first, middle and last rapes, the majority of serial rapists (78-85%) usually only conversed with the victims to threaten them. Much less frequently, their conversations were polite or friendly (30-34%), manipulative (23-37%), or personal (23-37%). In a minority of instances throughout the assaults, the rapist reported being inquisitive (15-20%), abusive/degrading (5-13%), or silent (8-13%). It appears that serial rapists use verbal threats to subdue the victim, and only after they believe they have gained control over the victim do they move on to various other modes of conversing or interacting.

SEXUAL DYSFUNCTION

In a study of 170 rapists, it was determined that 34% experienced some type of sexual dysfunction during the rape.[12] In fact, it has been noted that "the occurrence of offender sexual dysfunction and an in-

vestigatory understanding of the dysfunction may provide valuable information about the unidentified rapist."[13]

The data on these serial rapists are strikingly similar. In the first rape, 38% of the subjects reported a sexual dysfunction, 39% in the middle rape, and 35% during the last assault. This type of information can prove helpful to the investigator in associating different offenses with a single offender, because the nature of the dysfunction and the means the offender uses to overcome it are likely to remain constant over a number of rapes.

EVADING DETECTION

Considering the rapists' aptitude for avoiding detection, it is surprising to note that very few of the serial rapists employed specific behaviors designed to preclude identification. In fact, offenders tend to rape their victims in the victim's own home, thereby contributing to their ability to avoid detection.[14]

In addition, the majority of rapists (61-68%) did not report dressing in any special way for the offenses. Surprisingly, disguises were reported in only 7-12% of the offenses, suggesting that other means of evading detection were used by these particular offenders.

ALCOHOL AND OTHER DRUGS

Alcohol is commonly associated with rape, but other drugs, to a lesser degree, are also used at the time of the rape.[15] The data on these rapists suggest a somewhat different relationship between alcohol/drugs and serial rape. Approximately one-third of the rapists were drinking alcoholic beverages at the time of the first, middle and last offenses, and 17-24% of the respondents reported using drugs. In a majority of these cases, these figures reflect the offender's typical consumption pattern and not an unusual increase in substance abuse.

> ***"The most frequent changes after each of the crimes included feeling remorseful and guilty...following the case in the media...and an increase in alcohol/drug consumption...."***

POST- OFFENSE BEHAVIOR

The serial rapists were also asked about changes in their behavior following their assaults. The most frequent changes after each of the crimes included feeling remorseful and guilty (44-51%), following the case in the media (28%) and an increase in alcohol/drug consumption (20-27%). Investigators should also particularly note that 12-15% of rapists reported revisiting the crime scene and 8-13% communicated with the victim after the crime.

CONCLUSION

The research concerning serial rapists' behavior during and following the commission of the crimes has determined that:

- The majority of the rapes were premeditated
- The "con" approach was used most often in initiating contact with the victim
- A threatening presence and verbal threats were used to maintain control over the victim
- Minimal or no force was used in the majority of instances
- The victims physically, passively or verbally resisted the rapists in slightly over 50% of the offenses
- The most common offender reaction to resistance was to verbally threaten the victim
- Slightly over one-third of the offenders experienced a sexual dysfunction, and the preferred sexual acts were vaginal rape and forced fellatio
- Low levels of pleasure were reported by the rapists from the sexual acts
- The rapists tended not to be concerned with precautionary measures to protect their identities
- Approximately one-third of the rapists had consumed alcohol prior to the crime and slightly less reported using some other drug.

The most common post-offense behavior reported by the rapists were feelings of remorse and guilt, following the case in the media and an increase in alcohol and drug consumption.

These characteristics, although not generally applicable to every rapist, can be helpful in learning more about offenders, their behaviors and the heinous crime of rape. LEB

Footnotes

[1] Robert R. Hazelwood & Ann W. Burgess, "An Introduction to the Serial Rapist," *FBI Law Enforcement Bulletin*, vol. 56, No. 9, September 1987, pp. 16-24.

[2] Robert R. Hazelwood & Janet Warren, "The Serial Rapist: His Characteristics and Victims," *FBI Law Enforcement Bulletin*, vol. 58, Nos. 1 and 2, January and February 1989, pp. 10-17 and 11-18.

[3] Supra note 1.

[4] Supra note 1.

[5] Supra note 1.

[6] Robert R. Hazelwood, R. Reboussin & J. Warren, "Serial Rape: Correlates of Increased Aggression and the Relationship of Offender Pleasure to Victim Resistance," *Journal of Interpersonal Violence*, March 1989, pp. 65-78.

[7] Supra note 1.

[8] Supra note 5.

[9] Supra note 1.

[10] Supra note 5.

[11] Supra note 5.

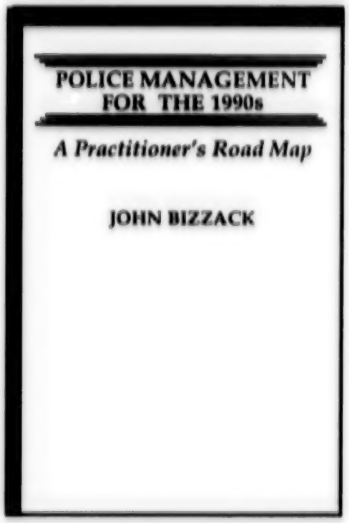
[12] N. A. Groth & A. W. Burgess, "Sexual Dysfunction During Rape," *New England Journal of Medicine*, October 6, 1977, pp. 764-766.

[13] Robert R. Hazelwood, "Analyzing the Rape and Profiling the Offender," *Practical Aspects of Rape Investigation: A Multidisciplinary Approach*, R. R. Hazelwood & A. W. Burgess (Eds.) (New York: Elsevier Science Publishing Co., Inc., 1987), pp. 169-199.

[14] Robert R. Hazelwood & J. Warren, "The Serial Rapist: His Characteristics and Victims," Part II, *FBI Law Enforcement Bulletin*, February 1989, pp. 11-18.

[15] R. Rada, "Psychological Factors in Rapist Behavior," *American Journal of Psychiatry*, vol. 132, pp. 444-446, 1975 and R. Rada, "Psychological Factors in Rapist Behavior," *Clinical Aspects of the Rapist*, R. Rada (Ed.) (New York: Grune and Stratton Publishing Co., Inc., 1978), pp. 21-85.

Book Reviews



Police Management for the 1990's: A Practitioner's Road Map, *by John Bizzack, Charles C. Thomas, Springfield, IL, 1989.*

This book reflects a great deal of research into management literature of the past 30 years. While the first several chapters digress slightly into a bashing of the experience and performance of current police leadership, *Police Management for the 1990s: A Practitioner's Road Map* provides a good paradigm for police leadership to consider during the 1990s. The book offers salient, cogent ideas designed to improve modern police leadership and enhance the management of police agencies.

An important element of the book is the author's attention to the external environment within which police agencies interact. These social, economic, legal, technological, and political concerns that exist outside the agency, but have a great impact on it, are discussed in detail. This information provides the framework for executives to plan strategically and enable their agencies to change "in sync" with the external change agents in their communities. The book stresses that these forces should be viewed in relation to an agency's own community, not from a global perspective.

The book also addresses the serious problem of drug investigations. Particular attention is given to the ability of the small- to medium-sized agency to implement a successful plan that addresses the drug problem.

Other chapters offer good suggestions for improving the physical conditions of police executives and agency personnel. The section on budgeting and fiscal planning is especially helpful and illustrates the necessity of this planning during an era of fiscal contraints.

Additionally, the author outlines a step-by-step process to help the police executive establish or enhance an ethical climate in the organization.

Police Management for the 1990s is good reading for the contemporary police executive. It provides concrete suggestions for the improvement of police agencies and provides a useful, well-rounded framework for the modern police manager.

Reviewed by
SA Robert F. McCarthy, MPA
Management Science Unit
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Quantico, VA

The Bureau of Business Practice Training Director's Handbook, *by Publishing Information Services Group, Prentice-Hall Inc., New York, 1989.*

The employee training function is often viewed as a management process in continual evolution. Now comes a new training manual entitled *The Bureau of Business Practice Training Director's Handbook*, which takes the reader on a comprehensive, step-by-step tour through updated versions of employee training programs. It lays an excellent foundation for realistic training.

While many training manuals are replete with lengthy dissertations on similar topics, the major strengths of the BBP handbook are brevity, fluidity and coherence. From employee and organizational needs assessment through individual training modes to overall program evaluation and assessment, the handbook consistently presents information in a clear and precise manner. Each section is analyzed expertly with an attention to detail that makes each of the 37 chapters interesting and valuable reading for the training professional. Reading it from beginning to end is a rewarding—and sometimes exhausting—experience.

While elaborating on various facets of a training philosophy, not unlike other publications in the field, the BBP handbook excels in the scope, detail and articulation in every subject area covered in its 300 pages. The writers have left little unexplained. The handbook presents new ideas and new applications of tried and proven techniques. This fresh perspective can be easily adopted by a training director in either the private or public sector.

The only discernable shortcoming lies not with the manual itself, but in its applicability to the law enforcement training environment. With the majority of law enforcement agencies having less than 25 employees, the applicability of a training program, as presented in the BBP handbook, may be of questionable merit.

As many law enforcement trainers are well aware, however, adaptation is a hallmark of results-oriented police training. Many ideas and procedures in the handbook, for this reason, appear to have an adaptive quality allowing it to be effectively conformed to a police department of almost any size. It is through adaptation that the BBP handbook can become a valuable source material for the training director.

The development and implementation of viable training programs illustrate how an organization can maximize the return on its training dollar. After reading this handbook, one comes away with a new perspective and positivism with regard to employee training, either in the law enforcement or corporate setting. In each case, the employee and the organization come out winners—and that's the name of the game.

Reviewed by
Mr. Rene A. Browett
Northern Virginia Criminal Justice Academy
Arlington, VA

Large Vehicle Stops

Standards and accepted procedures for vehicle stops involving cars and other passenger vehicles are part of the curriculum of most police training academies. But few address the techniques to be followed when officers stop large vehicles, such as tractor-trailers, utility vans, and buses. With the increased use of these types of vehicles to transport drugs and other contraband, officers find themselves stopping large vehicles more frequently. To ensure maximum protection to officers and individuals involved, the North Carolina Division of Motor Vehicles Training Section developed a plan detailing the mechanics for large vehicle stops.

Location

As with stops involving passenger cars, the officer must consider many different factors—traffic, congestion, pedestrians, road conditions, lighting, and the visibility of the stopped vehicles to approaching traffic. However, large vehicles require other special considerations, which are governed by the size, type, and configuration of the vehicle, as well as the number of officers available to assist at the stop location. The officer must plan the stop to allow the driver sufficient time and distance to make a safe stop at a location that provides a

paved and solid shoulder and enough area to pull the vehicle well out of the flow of traffic.

Positioning the Patrol Vehicle

During the daylight hours, the patrol vehicle should be offset at an angle with the rear of the vehicle and at least 20 feet behind it, with the patrol unit's wheels turned hard left. This provides a traffic safety cushion, as well as offers the officer more protection in case of any hostile acts from the occupants of the stopped vehicle.

At night, the patrol vehicle should be offset to the left of the stopped vehicle so as to allow the headlights to illuminate the side and cab area.

With buses, the officers will need to position the patrol unit in such a manner as to provide a view down the right side, since this is where the doors on most buses are located.

Approaching the Vehicle

Because the drivers of large vehicles are several feet above road surface, it is advisable to have the driver exit and walk to the rear of the vehicle to be met there by the officer. This allows the officer to remain in a safe location while removing the "high ground" advantage of the driver.

The officer should ensure that the driver closes the cab door to eliminate a traffic hazard. This also requires anyone in the cab to open the door before exiting, thereby warning the officer of the presence of another individual.

Officers also need to be watchful of cargo bays and should check to ensure that each cargo door is closed.

If the vehicle has stopped in such a way that the front of the vehicle is at an offset angle, then the officer may have to exit the patrol car and move to the front of the stopped vehicle. While walking the length of the vehicle, the officer should use the vehicle's side mirror to observe the driver and any activity in the cab. At no time should the officer climb onto a cab.

When stopping a bus, the officer must remember that most buses are built low to the ground, making the entire length of the vehicle a "danger" area since there is no cover or escape area. Also, with buses being built low, it is difficult for the officer to check under the vehicle to determine if someone is moving down the far side.

Violator Contact

It is best that the officer maintain a secure position, while having the driver approach the officer. The violator should be advised of the reason for the stop and asked to produce the necessary documentation. The driver should not be allowed to return to the vehicle without being accompanied by the officer or until the citation has been written.

Checking Cargo Areas

If it is necessary to inspect the cargo area, the officer should request backup prior to proceeding. The driver of the vehicle should open the cargo doors and be the one who moves the cargo around. After the cargo door is opened 4 to 6 inches, the officer, standing 3 to 4 feet behind the driver, should sweep a flashlight inside to check for other individuals who may be in the cargo area. If it is clear, the officer can then instruct the driver to open the door further and to lock it in an open position. Inspection of the cargo area can then proceed according to department policy.

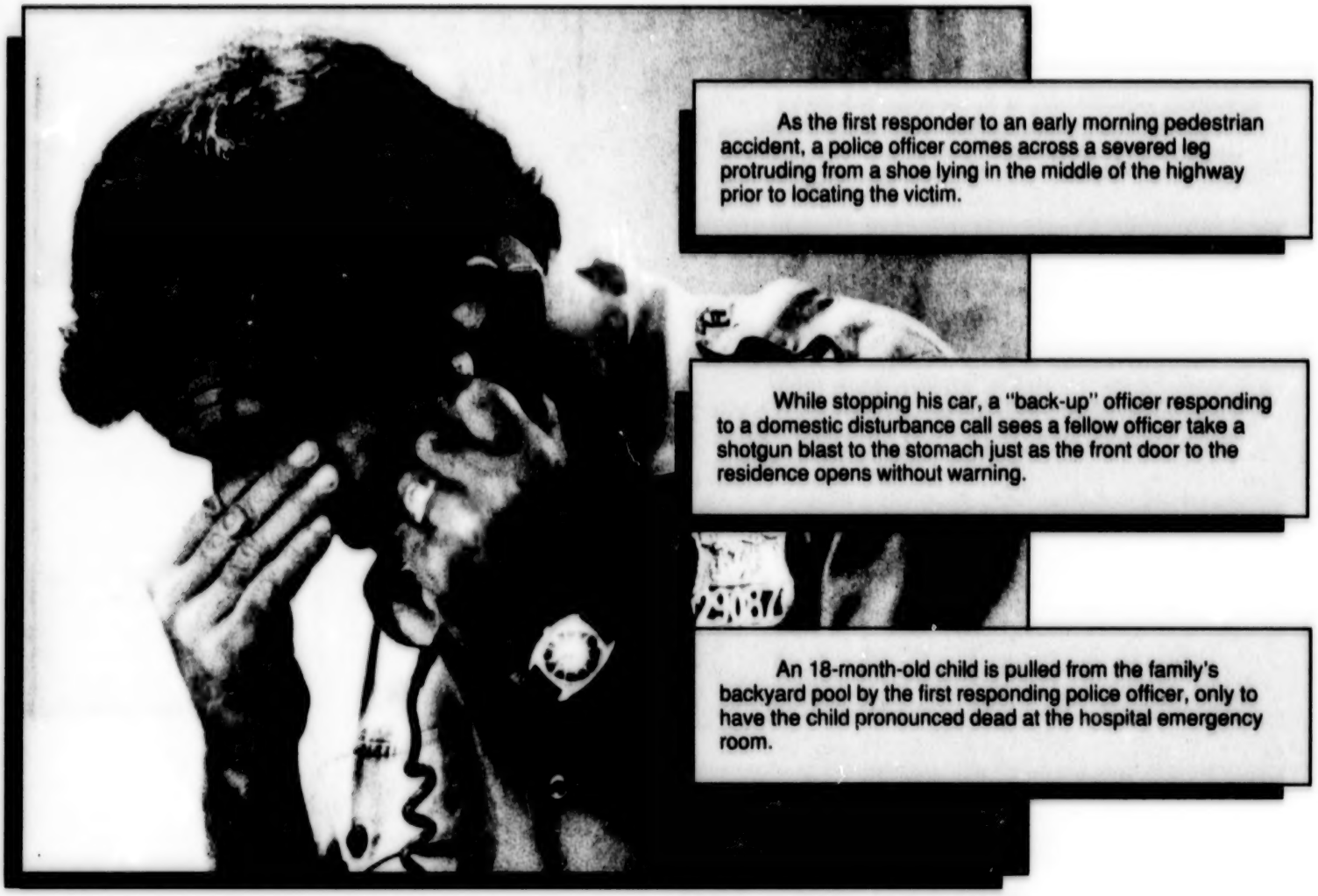
Conclusion

Daily, patrol officers are making traffic stops involving large vehicles. Each stop poses a potential danger. Therefore, all patrol officers should receive training in the proper procedures associated with stopping large vehicles. LEB

For more information concerning this subject or lesson plan information, contact William D. Dean, Training Officer, North Carolina Division of Motor Vehicles, 1100 New Bern Ave., Raleigh, NC 27697.

Police Practices serves as an information source for unique or noteworthy methods, techniques, or operations of law enforcement agencies. Submissions should be no more than 750 words (3 pages, double spaced and typed) and should be directed to Kathy Sulewski, Managing Editor, *FBI Law Enforcement Bulletin*, Room 7262, 10th & Pennsylvania Ave., NW, Washington, DC 20535.

Critical Incident Stress Debriefing



As the first responder to an early morning pedestrian accident, a police officer comes across a severed leg protruding from a shoe lying in the middle of the highway prior to locating the victim.

While stopping his car, a "back-up" officer responding to a domestic disturbance call sees a fellow officer take a shotgun blast to the stomach just as the front door to the residence opens without warning.

An 18-month-old child is pulled from the family's backyard pool by the first responding police officer, only to have the child pronounced dead at the hospital emergency room.

Photo by Jan Sheldon. Courtesy of NYPD.

By
CAPT. RICHARD J. CONROY, M.S.

These accounts typify the wide-range of emotionally traumatic incidents that law enforcement officers may encounter. As first responders on the scene, they must act without delay, often without the support or backup of other emergency services personnel.

Research conducted by Dr. Jeffrey T. Mitchell[1] of the University of Maryland suggests that almost 90 percent of all emergency services personnel are affected at least once by critical incident stress during their careers.

In the past 2 decades, much emphasis has been placed on the effects of critical incident stress on the emergency services worker who is not a law enforcement officer. Unfortunately, the law enforcement community has been rather slow to accept the fact that critical incident stress can also be a potentially debilitating syndrome that seriously affects both the job performance and personal lives of police officers.[2]

Critical Incident Stress

Critical incident stress can be brought on by any action that causes extraordinary emotion and overwhelms and impacts on an individual's normal ability to cope, either immediately following the incident or in the future. Police officers' human coping mechanisms are no different than those of others, just because they carry a badge and a gun. And the myth that police officers always have total emotional control in all situations is just that—a myth, not a reality.

Any incident that results in deep emotional impact has the potential to overwhelm an officer's ability to cope. Oftentimes, it makes the officer come face to face with his or her vulnerability or sense of mortality, such as in an officer-involved shooting, the death or serious injury of a co-worker, prolonged or extraordinary rescue operations, or life-threatening, dangerous, or "close" calls.

For the most part, society expects law enforcement officers to handle whatever comes their way, to turn emotions on and off at will. But, is it reasonable to expect police officers to be all things to all people? And what happens if they can't live up to the expectations society places on them? Are there solutions to the problem?

The Debriefing Process

The Critical Incident Stress Debriefing (CISD) process has been developed in an effort to make law enforcement officers and emergency service workers understand that they are normal people, having normal reactions to abnormal events or situations. These debriefings are not the operational critiques that law enforcement administrators traditionally schedule after a major incident. Instead, they are gatherings led by a trained mental health professional with the assistance of supportive peer personnel.

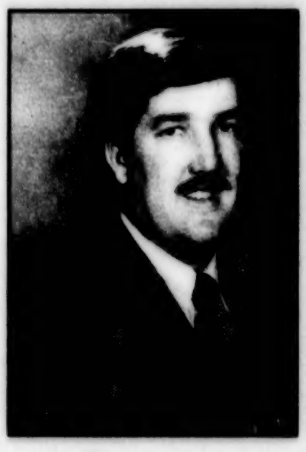
The concept behind these debriefings is to encourage free expression of thoughts, fears, and concerns in a supportive group environment without losing status among one's peers. In fact, debriefings are much more successful and the feedback more positive when peer support personnel are more active.[3]

The debriefing process allows individuals to gain insight and reframe the event in a different perspective. As short-term initial intervention, it often aids in preventing some of the long-term cumulative effects caused by traumatic incidents.

Some departments require personnel to attend a debriefing session after being involved in a critical stress incident, while others make attendance a personal choice.

All debriefings are confidential and provide an opportunity for educating officers on stress responses, as well as letting those involved

"...almost 90 percent of all emergency services personnel are affected at least once by critical incident stress...."



Captain Conroy is the Assistant Chief of Police in the Saint Cloud, FL, Police Department.

know that they are not alone in their thoughts and feelings. Successful law enforcement debriefings have been conducted after the Winnetka, IL, school shooting, the Palm Bay, FL, shopping center shooting, and the Cerritos, CA, air disaster.

Debriefing Teams

Debriefing teams are support groups composed of volunteer trained mental health professionals and emergency workers who learn to talk with others about job-related stress. The team counsels others on dealing with the emotional toll of their professions.

Team members undergo 16 hours of training before they can conduct a counseling session, which is usually scheduled within 48 hours after emergency workers have been involved in a critical incident. During the training, these volunteers are taught to identify critical incidents and the physical and emotional symptoms resulting from them, as well as delayed stress reactions.

Team members must also become familiar with a debriefing model. Basically, this model covers how to get people to identify what happened, their role in the incident, and what impact the incident had on them. If additional assistance is needed after the debriefing session, the individual is given a list of referrals to contact for one-on-one counseling.

Almost 100 CISD teams across the country operate on national, statewide, regional, and local levels. These teams have conducted in excess of 4,500 debriefings for law enforcement, as well as other emergency services workers since 1983.

A number of larger police agencies have formed their own departmental teams and have trained peer debriefers, written operational procedures, and gathered administrative support for the CISD concept. Other police agencies have networked their members into county and regional teams where multidisciplinary resources from police, fire, emergency medical, hospital, chaplaincy, and mental health are pooled and shared as the need arises.

> ***"Agency administrators owe it to their communities to assist in dealing with the effects of critical incident stress."***

Law Enforcement Concerns

The many administrative misconceptions about police involvement with mental health professionals are changing. The philosophies like "we can handle anything" and "it all comes with the job, take it or leave it" are becoming archaic.

Police managers who have witnessed officers suffering from a vast array of emotional, physical, and behavioral symptoms are beginning to recognize that these conditions can be the resulting effects of critical incident stress. Employee turnover, sick leave abuse, an increase in alcohol consumption, extreme aggressiveness, and substance abuse are just a few of the outward signs that an officer may need help from the department and peers.

Training and education in the area of stress management have become somewhat common practices in the police profession. Within the past few years, any law enforcement conference, workshop, or seminar would not be complete without a segment or speaker on stress management, stress symptoms and their effects. But, there is still a long road to travel. Agency administrators need to realize that training programs will be more effective if they cover more than just the basics of stress education. Programs should encourage the dissemination of information specific to critical incident stress and the associated debriefing process.

Conclusion

Providing critical incident stress debriefing services to law enforcement officers should be no different than giving officers the proper tools and equipment to perform their jobs correctly. Agency administrators owe it to their communities to assist in dealing with the effects of critical incident stress. The well-being of their departments, officers, and the citizens they serve depend on it. LEB

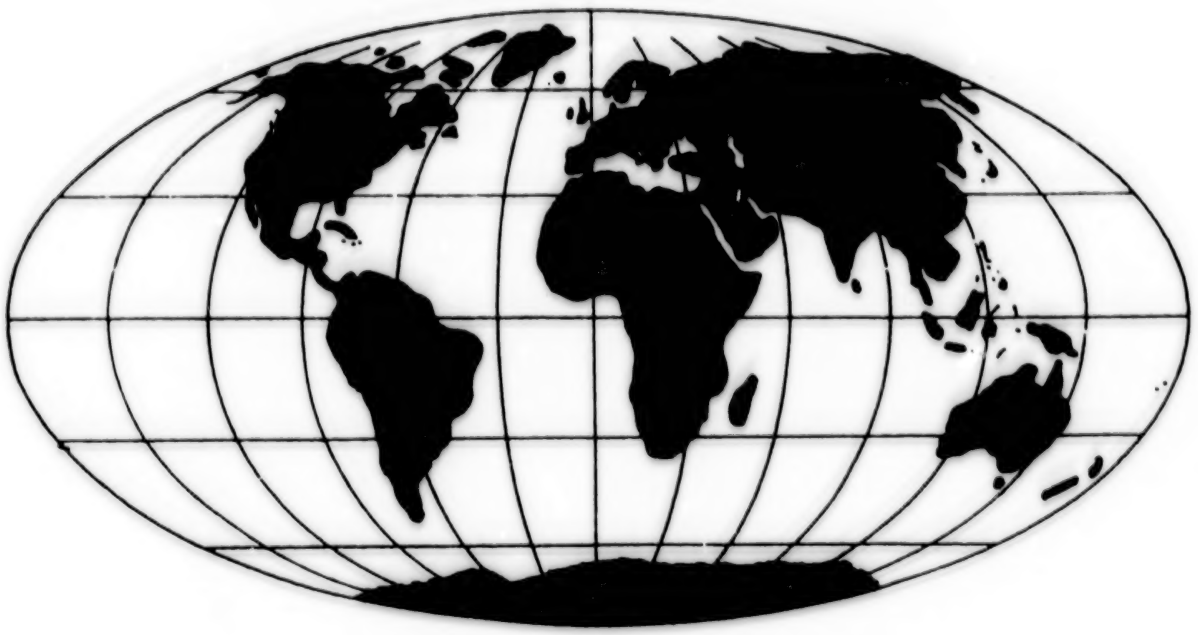
Footnotes

[1]Jeffrey T. Mitchell, *Roles, Stressors and Supports for Emergency Workers*, National Institute of Mental Health, U.S. Department of Health and Human Services, 1985.

[2]Thomas Pierson, "Critical Incident Stress: A Serious Law Enforcement Problem," *The Police Chief*, Vol. 66, No. 2, pp. 32-33.

[3]Jeffrey T. Mitchell, Critical Incident Stress Debriefing Training Seminar, Orlando, FL, April 1989.

Foreign Searches and the Fourth Amendment



By
AUSTIN A. ANDERSEN, LL.B.

In a recent international, multi-million dollar heroin conspiracy and money laundering prosecution, in which local police officers in Bermuda arrested and searched a fugitive charged in New York for Federal violations, a U.S. District Court observed that since modern day narcotics trafficking is conducted on a global scale, law enforcement agencies will have to enlist the cooperation of their counterparts in other parts of the world. The court went on to note, "This international cooperation does not mandate the conclusion that the assistance rendered by foreign officials thereby makes them agents of the United States and thus subject to our Constitution and jurisprudence."[1]

Because the tide of drugs flowing into the United States cannot be stemmed unilaterally, it is becoming increasingly more obvious that the war against drugs requires teamwork by law enforcement agencies of the world. As various nations share information, coordinate cases of mutual interest, locate each other's fugitives, and participate in transcontinental un-

dercover operations, American courts are being asked to delineate standards governing the admissibility of evidence collected in foreign countries.

The purpose of this article is to identify the different circumstances under which evidence can be located in a foreign search and to determine when that evidence will be admissible in American courts. The salient legal issues to be addressed are: 1) Whether the fourth amendment is applicable to a foreign search; and 2) if so, what procedures must police use to meet the reasonableness standard of the fourth amendment.[2]

The resolution of the first issue depends on the degree of involvement or participation by U.S. officials in the foreign search; in general, the greater the involvement, the more likely fourth amendment standards will apply. The extent of involvement by U.S. officials can range from none to exclusive control; the former situation will not implicate the fourth amendment while the latter will. More difficult to categorize are those foreign searches in which there is some degree of involvement by both U.S. and foreign officials. This article discusses specific cases where courts have attempted to define the standards for determining exactly how much involvement by U.S. authorities is needed to trigger the extraterritorial application of the fourth amendment and its reasonableness requirement.

Foreign Searches With No U.S. Involvement

It is clear that evidence independently acquired by foreign police for their own purposes is admissible in U.S. courts despite the fact that such evidence, if seized in the same manner by American police, would be excluded under the fourth amendment.[3] This rule applies even when those from whom the evidence is seized are American citizens.[4] Such evidence is not suppressed for two reasons. First, the Supreme Court decided more than 60 years ago that the framers of the U.S. Constitution did not intend the fourth amendment to apply to private parties, i.e., individuals who are not officials of the U.S. Government.[5] Second, the exclusionary rule is not a constitutional right but is instead a judicially created device intended to deter misconduct by U.S. officials.[6] Because the suppression in American courts of evidence seized by foreign officials would have no deterrent effect on police tactics in the United States, no purpose is served by such punitive exclusion.

American police, however, are often the beneficiaries of such evidence. For example, Canadian authorities recently used a wiretap that did not meet U.S. standards and then provided the contents of that intercept to DEA agents. The U.S. Court of Appeals for the Ninth Circuit held that because the DEA was not involved in the initiation or monitoring of the wiretap, the fourth amendment was not a bar to the use of evidence from the wiretap in an American court.[7]

A rarely applied exception to this rule occurs when a foreign sovereign's actions during the search are so extreme as to shock the judicial conscience, even though no American involvement is present.[8] Because of the small number of cases in which evidence has been suppressed for shocking conduct, it is not clear just how outrageous the conduct must be before a court will exercise its supervisory authority to

"...American courts are being asked to delineate standards governing the admissibility of evidence collected in foreign countries."

Special Agent Andersen is an instructor assigned to the Legal Instruction Unit at the FBI Academy.

enforce the exclusionary rule. One case illustrating such shocking conduct is *United States* v. *Toscanino*,[9] in which a Federal appellate court held that the fourth amendment was violated when the defendant, an Italian national, was forcibly abducted by Uruguayan agents, tortured, interrogated for 17 days, drugged, and returned to the United States for trial.

Foreign Searches Conducted Exclusively by U.S. Authorities

It is clear that a search controlled exclusively by American authorities—either inside or outside the territorial boundaries of the United States—must be conducted in a manner consistent with the fourth amendment. The U.S. Government, whether it acts at home or abroad, is subject to the limitations placed on its power by the Bill of Rights, at least as far as its relationship with U.S. citizens is concerned.[10] Although the ability of a sovereign state to assert its authority is generally limited to acts occurring within its territorial boundaries, certain situations motivate nations to assert subject matter jurisdiction for their courts to entertain criminal matters which take place in other countries.[11]

In an ever-shrinking world, criminalization of extraterritorial acts by one nation is usually respected by other nations, as long as the statutes conform to generally recognized principles of international law.[12] For example, Congress has extended Federal jurisdiction to vessels at sea, overseas government reservations, and U.S. aircraft.[13] Similarly, Congress has enacted legislation protecting U.S. nationals from terrorist acts in other countries.[14] In addition, courts often construe ordinary statutes designed to protect the government as having extraterritorial effect, as long as the elements of the statute do not specifically exclude such an intent by the legislature.[15]

While Congress has the power to make certain types of extraterritorial activity illegal, the ability of U.S. agents to investigate such violations on foreign soil cannot be granted without contravening customary international law, which accords each of the nations of the world exclusive peace-keeping jurisdiction within its borders.[16]

> ***"The U.S. Government, whether it acts at home or abroad, is subject to the limitations placed on its power by the Bill of Rights...."***

Generally, American law enforcement officers who conduct investigations abroad rely on the foreign country's invitation, treaty, or permission;[17] more often, the investigation is performed by the foreign officials themselves at the request of U.S. authorities. However, in cases where Congress has created extraterritorial investigative jurisdiction and where the host country grants permission to investigate, American authorities must then conduct their inquiry in a manner consistent with the U.S. Constitution.

Foreign Searches by Foreign Authorities with Involvement of U.S. Officials

Since U.S. officials do not normally conduct investigations in foreign countries, most foreign searches which produce evidence of interest to U.S. law enforcement officers are conducted by foreign police. The most important exception to the general rule of admissibility of evidence located by foreign police occurs when there is substantial involvement in the search by U.S. authorities. Two types of involvement, often found together in the same case, are more likely to transform a foreign search into one subject to the protections of the fourth amendment: 1) American officials make foreign police their agents by causing them to conduct searches solely in the interest of the U.S. law enforcement agency;[18] or 2) American officials, through their substantial participation, convert the search into a joint venture.[19]

Providing intelligence concerning criminal activity to a foreign police department does not necessarily convert the foreign police officer who conducts a search based on this information into an agent of the U.S. official. For example, when FBI Agents in New York notified the Royal Canadian Mounted Police (RCMP) that an American citizen living in Toronto had information about stolen securities that would soon be transported from the United States into Canada for sale and distribution, RCMP officers debriefed the informant and conducted a warrant-

less search of the defendant's hotel room. A Federal court refused to suppress evidence received from the RCMP search, which would have been invalid under the fourth amendment. The court held that the transmittal of the name, telephone number, and general information concerning a crime of potential interest to both countries amounts to routine interagency cooperation and does not rise to the level of American involvement necessary to invoke the fourth amendment.[20]

Another Federal court condoned a higher degree of involvement in a case in which FBI Agents notified Mexican police of the identities of two individuals in possession of vehicles stolen in the United States for importation and sale in Mexico, a violation of both U.S. and Mexican statutes.[21] After the Mexican police conducted a warrantless search of the defendant's premises, a second search was conducted in the presence of an FBI Agent. Neither search met fourth amendment requirements. Noting that the Mexican police had a legitimate investigative interest in the defendant's activity, the court held the fourth amendment inapplicable to evidence located in a search by Mexican police, even though the defendants were American citizens, the American police provided the information leading to the search, and an American agent was present at the scene of the search.

These cases imply that a foreign officer who has no independent motivation for a search conducted solely at the behest of a U.S. officer may be considered an agent of that U.S. officer; if so, evidence produced by that search will be tested for admissibility in the U.S. court system under the fourth amendment.[22] Generally, it is unusual for a foreign police officer to have absolutely no interest in the outcome of a search executed in his country, and an independent motive to search can often be found.

> **"...courts must decide whether the participation by American officials rises to the level necessary to convert the search into a joint venture...."**

In *United States* v. *Molina-Chacon*,[23] the defendant objected to the introduction of evidence seized from his attache case by Bermudian police during an arrest conducted at the request of DEA agents who had a warrant charging him with conspiracy to import heroin into the United States. Avoiding the issue of whether the search of the attache case was constitutional, the court held that the Bermudian police were not mere agents of the United States when they cooperated in the apprehension of a criminal for whom process was outstanding in New York.[24] The court's decision was based on the following factors: 1) Molina-Chacon suffered no mistreatment at the hands of the foreign officers; 2) his rights under the laws of Bermuda were honored; 3) DEA agents, although they possessed an arrest warrant, lacked the power to execute it in a foreign country; 4) at least part of the conspiracy charged occurred on Bermudian soil; and 5) routinely complying with official requests to locate fugitives of other nations is part of the broad responsibility of the police agencies of the world to cooperate with each other.[25]

In most foreign searches with U.S. involvement, there is some common interest in the subject matter of the investigation. In these cases, courts must decide whether the participation by American officials rises to the level necessary to convert the search into a joint venture, thereby invoking the protections of the fourth amendment. One court has described the necessary level as "substantial participation,"[26] based on a case-by-case factual analysis.

The following examples of involvement by U.S. officials reflect the range of activity that courts have held *did not convert* searches into joint ventures:

- Presence of an American agent to observe a search not under his control;[27]
- Providing information predicating the foreign investigation and limited assistance at the search scene when there is a substantial foreign interest in the case; [28]

- A request for international cooperation by police agencies contacted by the United States for assistance in the arrest of a fugitive.[29]

However, a joint venture was found in a recent case in which DEA agents notified authorities in Thailand of a marijuana smuggling ring in that country, participated in monitoring a wiretap installed by the Thai police on the defendant's telephone, and reviewed all information received from the wiretap.[30]

The above cases show that courts will conduct factual analyses of foreign searches to determine if involvement by U.S. officials is so marginal as not to implicate the fourth amendment or so substantial that the action must be characterized as an exercise of American authority subject to the limitations of the U.S. Constitution. For American law enforcement officers, however, the determination of exactly how much involvement will transform a foreign search into a joint venture is not easily predictable.

Application of the Fourth Amendment to a Jointly Conducted Search

Once the decision has been made that a search is a joint venture between the U.S. and foreign authorities, evidence resulting from the search must be measured against the fourth amendment in order to determine its admissibility in an American court. The Supreme Court has ruled that all warrantless searches are unreasonable per se unless a recognized exception to the warrant requirement exists.[31] Warrantless joint venture searches which fall within such exceptions (such as consent, incident to arrest, or emergency) will, therefore, produce admissible evidence as long as the legal requirements for the exception are met. The emergency exception, in particular, seems appropriate to the U.S. official in a foreign land where time, language, and distance create formidable barriers to the issuance of a warrant by a magistrate in the United States. Courts generally excuse the need for a search warrant where probable cause exists and clearly articulated exigent circumstances make consultation with a judicial officer impractical.[32] In fact, Congress has facilitated the need for practical extraterritorial action when time is of the essence by authorizing certain warrantless intrusions without probable cause, such as the ability of the U.S. Coast Guard to search ships sailing under the American flag on the high seas[33] and U.S. Customs officers to board any vessel entering waters under Customs jurisdiction.[34]

> ***"...courts will conduct factual analyses of foreign searches to determine if involvement by U.S. officials is so marginal as not to implicate the fourth amendment...."***

In the event that an American officer participates in a joint search that does not fall within a recognized exception to the warrant requirement, there is still a chance that evidence located may be salvaged through an exception to the exclusionary rule. In *United States* v. *Peterson*,[35] Philippine authorities, at the request of DEA agents, conducted a wiretap which the court considered a joint venture. When information from the wiretap was used as a basis for a search, the court reasoned that the law of the foreign country must be consulted as a factor to determine whether the wiretap was reasonably conducted. In this case, although the wiretap and resulting search were invalid under Philippine law, the Ninth Circuit Court of Appeals found that a reasonable reliance on the foreign law enforcement officers' representations that there had been compliance within their own law triggered the good faith exception to the exclusionary rule.[36]

Courts differ on how they resolve the reasonableness issue in joint searches for which there is no apparent exception to the warrant requirement or the exclusionary rule. One solution is to adopt the foreign constitutional norm when it is a reasonable substitute for U.S. procedure.[37] This approach eliminates the practical difficulty of attempting to superimpose American regulations on the cooperating foreign host.

Recently, however, in *United States* v. *Verdugo-Urquidez*,[38] the Ninth Circuit Court of Appeals, in a case hinging on the question of whether the fourth amendment applies to joint searches of nonresident

aliens in foreign countries, held that the fourth amendment is the proper standard for U.S. governmental searches of citizens or aliens, at home or abroad. Verdugo-Urquidez, a Mexican national suspected of the torture-murder of an undercover DEA agent, became a fugitive after being charged by the DEA with numerous drug violations in the United States.

Based on the outstanding American warrant, Verdugo-Urquidez was arrested in Mexico by the Mexican Federal Judicial Police (MFJP) and remanded to U.S. Marshals at the California border. The next day, the Director of the MFJP, at the request of DEA agents, authorized a warrantless search of Verdugo's two residences in Mexico. During the searches, conducted by MFJP officers and DEA agents, one of the DEA agents found and seized documents allegedly reflecting the volume of marijuana smuggled into the United States by Verdugo's organization. Because the searches—which were unrelated to any contemplated Mexican prosecution—were initiated and participated in by DEA agents (who took custody of the evidence), both the U.S. District Court and the Ninth Circuit Court of Appeals found the participation of the DEA agents so substantial as to convert the searches into joint ventures.

Since the searches were of questionable validity under Mexican law, the government argued that the good faith exception to the exclusionary rule should apply to the evidence because it was reasonable for the U.S. officials to rely on representations of the Mexican police that the searches were legal. The court disagreed, stating that the fourth amendment, and not Mexican law, governs the procedures for joint searches in foreign countries. Most significant, however, was the finding that in the absence of any exception to the warrant requirement, the fourth amendment required the DEA agents to obtain a U.S. search warrant in order to search the residence of a foreign national. The Supreme Court has agreed to review this lower court decision during its 1989-1990 term.

> ***"Evidence located in foreign countries by foreign police acting independently is not subject to fourth amendment standards...."***

Conclusion

Evidence located in foreign countries by foreign police acting independently is not subject to fourth amendment standards and is admissible in American courts, unless there is conduct during the search so outrageous and bizarre as to shock the judicial conscience. Evidence located by U.S. officials acting independently in a search abroad is subject to fourth amendment scrutiny. Often, however, there is involvement by both American and foreign police in searches outside the United States. In these cases, the following factors are among those considered in determining the degree of involvement by U.S. officials: 1) How the search or investigation was initiated; 2) whether the search related to any contemplated investigation or a violation of the laws of the foreign country; 3) whether U.S. authorities merely observe, participate in a passive or supportive role, or control the execution of the search; 4) which agency seized the evidence; and 5) which agency maintained custody of the evidence. Because courts may differ in the weight they give to the above factors in the context of varying factual situations, it is difficult to anticipate the precise degree of involvement which will convert a foreign search into a joint venture. If it becomes apparent that an American official will be involved in a foreign search that might be considered a joint venture, that official should then consider seeking legal advice to be certain that any action will be deemed reasonable by fourth amendment standards. LEB

Footnotes

[1] *United States* v. *Molina-Chacon*, 627 F.Supp. 1253, 1260 (E.D.N.Y. 1986).

[2] U.S. Const. amend. IV reads: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

[3] *See, e.g., United States* v. *Mount*, 757 F.2d 1315, 1317 (D.C. Cir. 1985); *United States* v. *Rose*, 570 F.2d 1358, 1361-2 (9th Cir. 1978); *Government of Canal Zone* v. *Sierra*, 594 F.2d

60 (5th Cir. 1979). See also Saltzburg, "The Reach of the Bill of Rights Beyond the Terra Firma of the United States," 20 Va. Journal of Int. Law 741 (1980).

[4] *See, e.g., Birdsell* v. *United States*, 346 F.2d 775, 782 (5th Cir. 1965), *cert. denied*, 382 U.S. 963 (1965).

[5] *Burdeau* v. *McDowell*, 256 U.S. 465 (1921). See Andersen, "The Admissibility of Evidence Located in Searches by Private Persons," *FBI Law Enforcement Bulletin*, April 1989, pp. 25-29.

[6] The exclusionary rule should be used only in those situations where this remedial objective will be achieved. *See United States* v. *Janis*, 428 U.S. 433, 446-7 (1976).

[7] *United States* v. *LaChapelle*, 869 F.2d 488 (9th Cir. 1989); *see also, United States* v. *Delaplane*, 778 F.2d 570 (10th Cir. 1985).

[8] *Supra* note 4.

[9] 500 F.2d 267 (2d Cir. 1974). *Toscanino* is a seizure rather than a search case; it nevertheless illustrates an example of appalling behavior by foreign officials which shocked the judicial conscience in a fourth amendment case. In *Rochin* v. *California*, 342 U.S. 165 (1952), the Supreme Court found that U.S. officials committed shocking and outrageous conduct when they forced an emetic solution into the defendant's mouth to recover two morphine tablets which had been swallowed. *See also, U.S. ex rel. Lujan* v. *Gengler*, 510 F.2d 62, 65 (2d Cir. 1974), another abduction case, in which the court, noting the absence of torture or brutality, held that a defendant forcibly brought from a foreign country into a domestic court's jurisdiction was without a judicial remedy absent "conduct of the most outrageous and reprehensible kind...." The authority to try defendants who have been abducted for the purpose of bringing them within a court's jurisdiction is based on two U.S. Supreme Court cases—*Ker* v. *Illinois*, 119 U.S. 436 (1886) and *Frisbie* v. *Collins*, 342 U.S. 519 (1952).

[10] *See Reid* v. *Covert*, 354 U.S. 1, 5-6 (1957), in which Justice Black writes for the majority: "When the government reaches out to punish a citizen who is abroad, the shield which the Bill of Rights and other parts of the Constitution provide to protect his life and liberty should not be stripped away just because he happens to be in another land." See also, note, "The Extraterritorial Application of the Constitution - Unalienable Rights?" 72 Va. L. Rev. 649 (1986); and Ragosta, "Aliens Abroad: Principles for the Application of Constitutional Limitations to Federal Action," 17 N.Y.U.J. Intern. L. & P. 287 (1985).

[11] *See, e.g., United States* v. *Bowman*, 67 L.Ed. 2d 145, 151 (1922) in which the Court finds authority to criminalize certain extraterritorial acts "because of the right of the government to defend itself against obstruction or fraud, wherever perpetrated."

[12] The source of recognition under international law for criminal statutes that affect the world community has traditionally been the following five principles of jurisdiction: 1) Location of the offense; 2) nationality of the victim; 3) nationality of the offender; 4) protection of governmental functions; and 5) universally repugnant crimes, such as piracy. For discussion, see Empson, "The Application of Criminal Law to Acts Committed Outside the Jurisdiction," 6 American Criminal Law Quarterly 32 (1967); and Petersen, "The Extraterritorial Effect of Federal Criminal Statutes: Offenses Directed at Members of Congress," 6 Hastings International and Comparative Law Review 773 (1983).

"Evidence located by U.S. officials acting independently in a search abroad is subject to fourth amendment scrutiny."

[13] 18 U.S.C. §7 (Special maritime and territorial jurisdiction of the United States).

[14] 18 U.S.C. §2331 (Terrorist acts abroad against U.S. nationals).

[15] *See, e.g., United States* v. *Layton*, 509 F.Supp. 212, 220 (N.D. Cal. 1981), in which the defendant was charged with the homicide of Congressman Leo J. Ryan in Guyana on 11/18/78. The court denied Layton's motion for dismissal for lack of subject matter jurisdiction, stating that the Federal statute (18 U.S.C. 351) protecting U.S. officials has extraterritorial reach "at least when the attack is by a U.S. citizen and when the Congressman is acting in his or her official capacity."

[16] *See, e.g.*, 1 Restatement (Third) of the Foreign Relations Law of the United States §206.

[17] *See Lujan, supra* note 9, at 66-8 for a discussion of the ability of police officers to engage in official conduct in another country without the permission or in defiance of representatives of that country.

[18] *See, e.g., United States* v. *Rosenthal*, 793 F.2d 1214, 1230-31 (11th Cir. 1986), *cert. denied*, 107 S.Ct. 1377 (1987).

[19] *See, e.g., United States* v. *Paternina-Vergara*, 749 F.2d 993, 998 (2d Cir. 1984), *cert. denied*, 469 U.S. 1217 (1985); *United States* v. *Hawkins*, 661 F.2d 436, 455-6 (5th Cir. 1981); *United States* v. *Marzano*, 537 F.2d 257, 269-71 (7th Cir. 1976), *cert. denied*, 429 U.S. 1038 (1977).

[20] *United States* v. *Morrow*, 537 F.2d 120 (5th Cir. 1976).

[21] *Supra* note 4.

[22] *See United States* v. *Hensel*, 699 F.2d 18 (1st Cir. 1983), in which the appellate court upheld a lower court finding that the exclusionary rule applied in a case where an American DEA agent urged Canadian authorities to seize and search a ship entering Canadian waters because the foreign officers acted as agents for their American counterparts.

[23] *Supra* note 1.

[24] *Id.* at 1260.

[25] *Id.* at 1259-60.

[26] *Supra* note 18, at 1231.

[27] *Id.* at 1223-26.

[28] *Id.*

[29] *Supra* note 1.

[30] *United States* v. *Peterson*, 812 F.2d 486 (9th Cir. 1987).

[31] *Katz* v. *United States*, 389 U.S. 347 (1967).

[32] *See, e.g., Mincey* v. *Arizona*, 437 U.S. 385 (1978).

[33] 4 U.S.C. §89(a).

[34] 19 U.S.C. §1581(a).

[35] *Supra* note 30.

[36] For discussion of good faith exception, *see United States* v. *Leon*, 468 U.S. 897 (1989), and Fiatal, "Judicial Preference for the Search Warrant: The Good Faith Warrant Exception to the Exclusionary Rule," *FBI Law Enforcement Bulletin*, July 1986, pp. 21-29.

[37] *See, e.g., Jordan*, 24 C.M.A. 156, 51 C.M.R. 375 (1976); Peterson, *supra* note 30.

[38] 856 F.2d 1214 (9th Cir. 1988), *cert. granted*, 109 S.Ct. 1741 (1989).

Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.

Research Forum

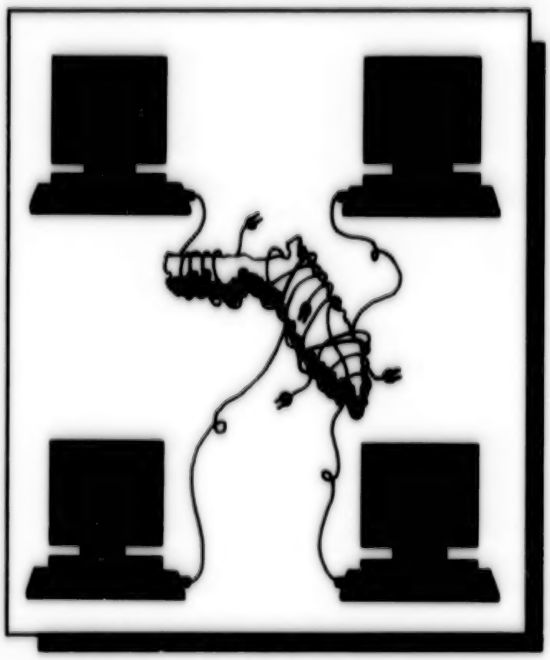
Florida's Computer Crime

In an attempt to gauge the impact of computer crime in the State, the Florida Department of Law Enforcement (FDLE) conducted a comprehensive survey of the local law enforcement community, State Attorneys' Offices and area businesses. The survey was part of FDLE's continuing goal of assessing changing crime problems and trends in Florida. The primary purpose of the study was to determine the extent of computer crime in Florida and to assess the impact it may be having on law enforcement agencies and prosecutors in the State.

For purposes of this study, computer crime was defined as any crime in which the computer was either the tool or the object of the crime. In other words, the computer had to be an essential part of the crime.

A total of 1,300 surveys were sent to law enforcement agencies, State prosecutors and businesses. Three different survey questionnaires were developed for each of the three groups included in the study. All police, sheriff and public safety departments in Florida received questionnaires, as well as 20 State Attorneys' Offices and 898 public and private Florida businesses. The rate of return was 73.6% for law enforcement, 90% for State Attorneys, and 44.9% for businesses.

The businesses surveyed consisted of organizations that had computer systems currently in operation at their facilities. Included in this group were universities, defense firms, government agencies, service industries and companies from other fields. A formula was used to ensure a representative sample of businesses. One business per 40,000 county population was selected, with a minimum of 2 businesses selected from counties with a population less than 40,000.



The State Attorneys' Offices surveyed indicated a steady rise in the number of computer-related crimes prosecuted by their offices. The study revealed, though, that the number of cases handled by prosecutors is still much lower than the actual number of computer crimes reported. The report attributes this discrepancy to the fact that in many computer-related cases, no suspect is identified, thereby precluding the need for further legal action in the case.

Of the business respondents, 24.2% indicated that within the last 12 months, they had experienced some type of verifiable computer crime, ranging from theft of computer soft/hardware, unauthorized use of computer resources, to destruction/alteration of computer data. One-fifth of the businesses reported verifiable monetary losses attributed to computer crime.

Perhaps the most disturbing findings of the survey concern the ability of law enforcement to adequately combat computer crime. Business respondents were asked to rate the ability of Federal, State and local authorities to effectively investigate computer crime based on the previous experience of the respondent. Federal agencies were given a fair to good rating, and State law agencies received a fair mark, while local law enforcement was given a poor rating. This response would perhaps explain another finding of the survey: 65% of the business respon-

dents said that they do not report any type of computer-related crime to authorities.

The survey revealed that among local law enforcement agencies, 64% handled computer-related crimes using standard investigative procedures.

One-fifth of the responding departments assigned computer cases to an investigator with special expertise in computer crime investigation.

Among the law enforcement and State Attorneys' respondents, there was an overwhelming consensus that there was not adequate computer crime training available to local law enforcement agencies. These respondents also indicated that if a case does go to trial, juries have difficulty understanding the complexities of computer crime.

The Florida Department of Law Enforcement recommends some steps for departments interested in improving computer-related crime investigations. These include sponsoring enrollment in basic computer operations courses to orient investigators to the many functions and uses (and potential misuses) of computers. In addition, the study concludes, successful prosecution depends on improving specific computer crime investigative techniques. LEB

This information, provided by Special Agent Jeff Herig, Florida Department of Law Enforcement, was compiled into a report entitled Computer Crime in Florida, 1989.

Unusual Weapon

Shotgun Shovel

This shovel handle, which had been transformed into a shotgun, was seized by reserve officers of the Mobile, AL, Police Department.

The metal shovel handle, fitted onto a 1-inch diameter piece of galvanized pipe, has a spring-loaded metal rod encased in the handle section. This acts as the firing mechanism. The "barrel" section of the weapon is a detachable 7-3/8" threaded metal pipe which screws onto the handle.

The weapon operates on a spring system. It is fired manually by pulling the spring-loaded rod to the rear of the handle and releasing it. The rod springs forward, striking the primer and discharging the shotgun shell. LEB

A Call for Photographs

We at the *FBI Law Enforcement Bulletin* invite you to submit your law enforcement-related photos for possible publication in our magazine. We can use either black-and-white glossy or color prints or slides, although we prefer prints (5x7 or 8x10). In particular, we are always on the lookout for dynamic photos in a vertical format for use on the cover. Appropriate credit will be given to contributing photographers when their work appears in the magazine.

The following list represents only some suggestions that might give you ideas. Don't feel restricted by it, but use it as a springboard for your own creativity. We look forward to seeing your work.

Please send your photographs to: John Ott, Art Director, *FBI Law Enforcement Bulletin*, J. Edgar Hoover F.B.I. Building, 10th and Pennsylvania Avenue, NW, Washington DC 20535. Telephone: (202) 324-3237.

Photographic Ideas

Law Enforcement Officers at Work

Examples: Officers interacting with the public; assisting the injured; arresting suspects; locating and examining evidence at a crime scene; patrols on foot, automobiles, motorcycles, or horseback; water or air patrols

Modern Technology & Equipment

Examples: Training; computerization; electronic surveillance; satellite technology

Terrorism

Examples: Hostage situations, bombing or arson aftermath, weapons, SWAT teams

Civil Unrest

Examples: Youth gangs, riots, inner-city violence, strikes and rallies, graffiti, crowd control

Forensic Science

Examples: Microscopic images—DNA, viruses, or evidence; examination of crime scene evidence

Child Abuse

Examples: Imply abuse with photographs of abandoned toys, a children's bedroom in disarray, a torn stuffed animal

Legal Issues

Examples: Courtroom activity; testimony of a witness or law enforcement officer; attorney talking to jury or conferring with client

Work-related stress

Examples: Employee/management relations; photographic interpretations of stress, such as an officer gripping the steering wheel of a car or an officer at a desk with head in hands

Crime Prevention

Examples: Citizen groups, neighborhood watch groups, crime awareness training; an officer helping the elderly, the handicapped, or youth groups

Drugs

Examples: Drug prevention efforts, drug paraphernalia

Law Enforcement Memorials

Examples: Photographic images to honor those officers who have died in the line of duty and to show the impact those deaths have on fellow officers, family, and friends

LEB

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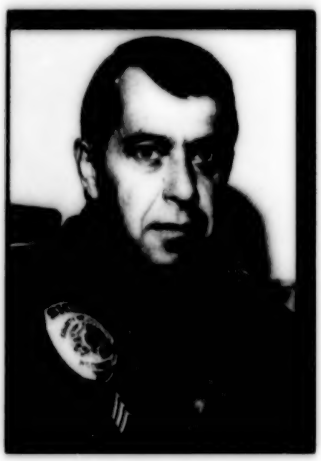
The Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize their exemplary service to the law enforcement profession.

While working a tour of duty as desk officer, Police Officer Stephen Dougherty of the Rampano, NY, Police Department directed a panic-stricken mother and her neighbor in the life-saving technique of infant CPR. Officer Dougherty gave calm and professional instructions to the caller, which resulted in saving the infant's life.

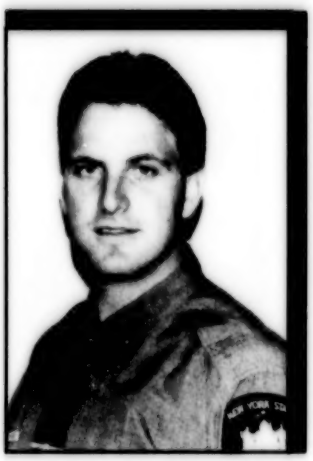
Officer Dougherty



Sgt. Robert Maxwell of the Jefferson County, WI, Sheriff's Department witnessed a head-on collision while off duty. He was able to rescue three accident victims before fire completely consumed the interior of one of the vehicles.

Sergeant Maxwell

While biking off duty, Park Patrol Officer Scott Ritchie, a seasonal officer with the New York State Park Police, Genesee Region, noticed two young boys being pulled toward an 8-foot culvert by rushing waters. While one of the boys was able to reach shore safely, the other disappeared under the water upon reaching the culvert. Officer Ritchie then rushed to the other side and was able to save the boy after he came through the culvert.



Officer Ritchie

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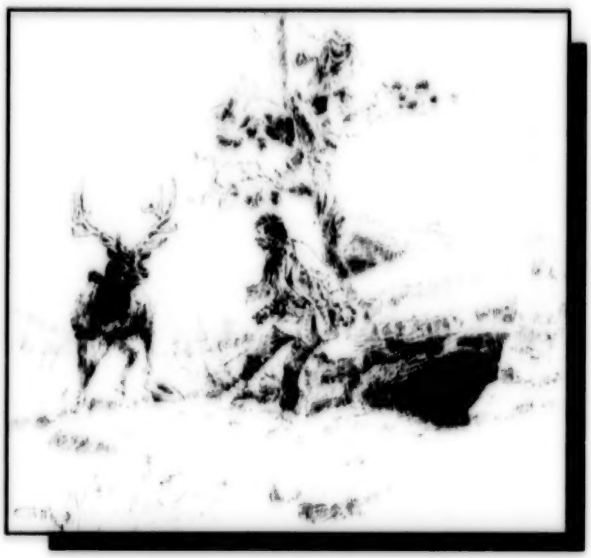
Address Correction Requested

Major Art Theft



On February 10, 1989, several drawings and water colors by Charles M. Russell were stolen from a private art gallery in Scottsdale, AZ. The total value of the stolen artwork is estimated to be $90,000. Pictured are two of the stolen pieces of artwork.

Any information concerning the theft should be directed to the FBI's Phoenix, AZ, Office at (602) 279-5511. Refer to their file number 87B-PX-41215. You may also contact the National Stolen Art File, FBI Laboratory, Washington, DC, at (202) 324-4434.

Top: Jack and Elk, *drawing in pen and ink, 10" x 11", value estimated at $25,000.*
Right: Self Portrait, *painting in pen, ink and water color, 9 1/2" x 5", value estimated at $25,000.*

END

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10/05/92